IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Appeal No.559 of 2001(old No. 384/79)

Rajendra Prasad,son of Sri Sadanand
Resident of village Kaligar Tala Patti
Vichala Badalpur,Tehsil Lansdown
District Garhwal. Appellant.

versus

1. Chandramani (since deceased) son of Madhavanand)
2 Chiranji Lal)
3 Bhagati Ram) son of Chandramani
4 Kamla (since deceased))
5 Budhi Ram aloas Gothia)
6 Pareshwar Prasad son of Guna Nand

All residents of village Kaligar
Tala Patti Vichala Badalpur, Tehsil Lansdown,
District Garhwal.

Respondents

Hon'ble B.C.Kandpal, J.

This Criminal Appeal arises out against the judgment and order dated 20.4. 1978 passed by Munshif Magistrate, Lansdown Garhwal in Criminal case No. 9 of 1977 thereby acquitting the respondents from the charges under Sections 147,148, 323,324/ 149 IPC.

Brief facts of the case giving rise to this appeal are that the appellant who is the complaint in the present case had filed a complaint against the respondents Chandramani,Chiranji Lal , Bhagati Ram,Kamla, Budhi Ram @ Gothia and Pareshwar Prasad under Sections 147, 323,324 IPC stating therein that the respondents assaulted the complainant on 25.4. 1976 at about 10-11 AM . It is stated in the complaint that the complainant was providing fodder to the cattle and the accused persons had ambushed behind the bushes. Due to the assault made by the accused persons the complainant sustained injuries on his

person. The complainant went to the Patwari Chawki for lodging First Information Report on the date of incident but due to non availability of Patwari he could not lodge the report, hence on the next day the complainant went to Lansdown in order to lodge the report but again due to non availability of Patwari he could not lodge the same. The complainant got himself medically examined and he also got medically examined his witnesses namely Sita Ram Lakhera and Smt. Maheshwari Devi on 26. 4. 1976.

The complainant thereafter instituted a complaint before the court below.

The trial court after having considered the averments made in the complaint as well as after looking into the statements of the witnesses was pleased to summon the accused persons for facing the trial.

After the accused respondents appeared before the court, the charges were leveled against them. The accused persons denied all the charges leveled against them and claimed their trial.

The complainant in order to bring the guilt of the accused to home, produced five witnesses, PW1 Rajendra Prasad, PW 2 Dr. M.S.Jaspal who medically examined the complainant and other witnesses. PW 3 , PW 4,PW 5 Bachi Ram, Sita Ram Smt. Maheshwari Devi respectively are eye witnesses.

The statement of the accused were recorded and thereafter the accused persons produced DW 1 Dr. Dimri in their defence. The accused also produced some documentary evidence in order to establish enmity between the parties prior to the date of occurrence.

The learned trial court after having perused the evidence and hearing the learned counsel for the parties was pleased to acquit all the accused persons of the charges leveled against them vide order dated 20.4. 1978.

Feeling aggrieved by the judgment of acquittal, the complainant preferred this appeal before the Hon'ble High Court of Judicature at Allahabad which was transferred to this Court for disposal after creation of State of Uttaranchal.

Record reveals that during the pendency of the appeal respondents/ accused Chandramani and Kamla have died.

I have heard Sh .Rajendra Kotiyal, learned counsel for the applicant, Sh. Raman Kumar Shah, learned counsel for the respondents and perused the record.

The record of the lower court could not be made available as there is a report of the concerned court below that the original record of the court below has been weeded out. Therefore, I have heard the learned counsel for the parties and perused the judgment passed by the trial court . On the basis of the documents available before me , I have decided the matter placed before me.

The documents which have been filed by the accused/ respondents clearly reveals that there is enmity between the parties and this fact has been discussed by the trial court in detail. The court below has discussed the eye witnesses account and has come to the conclusion that the prosecution could not establish the guilt of the accused beyond reasonable doubt and the trial court has given the benefit of doubt to the accused persons in the light of the evidence adduced before it.

It is worthy to mention here that this appeal is against the acquittal of the accused. The trial court after hearing the learned counsel for the parties and having assessed the evidence on record has come to the conclusion that the benefit of doubt should be extended to the accused persons in the interest of justice.

It is also important to mention here that the complainant did not lodge any First Information Report in this case and he preferred to institute a complaint before the court below instead of

lodging First Information Report, this fact goes in favour of the accused persons.

As far as the judgment of acquittal is concerned ,the appellate court should not ordinarily interfere in the judgment of acquittal passed by the trial court unless there is some serious error or misreading of the evidence by the trial court.

I do not find any ground for interference in the impugned judgment passed by the learned court below.

Accordingly the appeal is dismissed.

The judgment/ order dated 20.4.1978 passed by the learned court below is hereby confirmed.

(B.C.Kandpal, J)

21.11.2005

nbj